



May 4, 2010

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CG Docket No. 02-278

Dear Commissioners,

Thank you for the opportunity to comment on your recent proposal to harmonize the Telephone Consumer Protection Act (“TCPA”) Rules with the Federal Trade Commission’s (“FTC”) recently amended Telemarketing Sales Rule (“TSR”). This comment letter is submitted on behalf of Protocol Global Solutions. Below, we address the specific issues of (1) requiring prior express **written** consent of the called party for (2) **non-telemarketing** calls made using automatic dialing equipment or an artificial or prerecorded voice set forth in the notice of proposed rulemaking (“NPRM”) dated January 20, 2010.

The Introduction to the NPRM, sets forth the steps the Federal Communications Commission (“FCC”) would like comment on that would allow them to conform the TCPA Rules to the FTC’s TSR. Each of the four steps outlined are specific to telemarketing calls. The first step is of primary interest to Protocol. This step is as follows: “requiring sellers and telemarketers to obtain telephone subscribers’ **express written consent** (including electronic methods of consent) to receive prerecorded **telemarketing** calls even when there exists an established business relationship between the caller and the consumer.”

It appears from the outlined steps, the intent of the FCC is to amend the TCPA rules specific to telemarketing calls. In the discussion in the NPRM, the FCC states, “we seek comment on whether we should revise sections 64.1200(a)(1) and 64.1200(a)(2) of our rules to provide that for all calls, **prior express consent** to receive prerecorded **telemarketing** messages must be obtained in writing. However, the NPRM proposes to amend 47 CFR §64.1200(a)(1), which is applicable to “any telephone call.” The proposed rule change is to require “prior express written consent of the called party” for calls made using an automatic telephone dialing system or an artificial or prerecorded voice, unless the call is made for emergency purposes. The section of specific concern is § 64.1200(a)(1)(iii). This section, as proposed to be amended, would read:

No person or entity may initiate any telephone call (other than a call made for emergency purposes or made with the prior express written consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

Many businesses have gone to using prerecorded messaging as a means of communicating quickly and non-intrusively with their customers for non-telemarketing purposes. These types of messages include potential fraud alerts, payment reminders, flight status notifications, utility outage notifications, appointment reminders, package delivery notifications, event cancellations and other similar informational communications. As the FCC is aware, many people have moved away from landline telephones and use only a cellular phone as their main point of contact. We believe that by providing their cellular telephone number as their primary point of contact, most people would expect to receive

these types of information communications without having to provide additional consent. The proposed rule to require these businesses to obtain prior written consent for these types of non-telemarketing messages could have the effect of eliminating communications customers want, need, and have come to expect.

The NPRM proposes to amend § 64.1200(a)(2) in a similar manner – to require prior written consent for any telephone call to any residential line using an artificial or prerecorded voice to deliver a message. This section, however, has exceptions for calls made for emergency purposes; not made for a commercial purpose; or, made for a commercial purpose but that does not include an unsolicited advertisement or constitute a telephone solicitation.

Protocol would like the FCC to consider amending the rule to require prior written consent only for prerecorded **telemarketing** message calls. This would be consistent with the FTC's TSR.

Given the proliferation of cell phone usage since the TCPA Rules were originally promulgated, and the increased usage of prerecorded messaging as a convenient way for businesses to communicate with their customers, further restriction of this channel of communication for non-telemarketing messages may have an adverse effect on consumers. We appreciate the FCC considering these issues and Protocol's comments in conjunction with this NPRM.

Should you have any questions about these comments, please do not hesitate to call me at (941) 228-3023. Thank you.

Sincerely,

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